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REMARKS

Claims 1-9 and 11-26 are pending in the present Application. Applicants wish to thank the Examiner for the indication of allowability of Claims 12-26. Reconsideration and allowance of Claims 1-9 and 11 are respectfully requested in view of the following remarks.

Claim Rejections Under 35 U.S.C. § 102(b)

Claims 1-9 and 11 stand rejected under 35 U.S.C. § 102(b), as allegedly anticipated by JP 09 059225 ('225). Applicants respectfully traverse this rejection.

In responding to the Applicants' arguments the Examiner has asserted that "method claims 1 etc. remain so broadly defined that as written they remain anticipated by the prior art of record ... Note also that the specification of the reference as a whole does not limit the recovered alkyl aryl ether to only between 10-30%". (Office Action, page 2)

Applicants respectfully remind the Examiner that in Claim 1 the product stream comprises at least about 95% alkyl aryl ether by weight. Applicants also assert that '225 does not teach or disclose a product stream comprising at least 95% alkyl aryl ether by weight.

'225 discloses reacting dialkyl carbonate and an aromatic hydroxy compound in the presence of a catalyst to produce a diaryl carbonate. The reaction occurs in two reactive distillation columns. Alkyl aryl ether is produced as a side product. In paragraph [0026] '225 discloses removing a light distillate (fraction) from the first reactive distillation column. The light distillate comprises aliphatic alcohol, alkyl aryl ether and dialkyl carbonate. Paragraph [0028] discloses that the light distillate is then distilled to light, middle, and heavy fractions. The light fraction comprises aliphatic alcohol and dialkyl carbonate. According to paragraph [0030] the middle fraction contains dialkyl carbonate and preferably the amount of aliphatic alcohol and alkyl aryl ether are a minimum. The heavy fraction contains alkyl aryl ether. At best the reference teaches, in the last sentence of paragraph [0029] that the composition of the heavy fraction is "dialkyl carbonate 70 to 90% by weight, alkyl aryl ether is 10 to 30% by weight".

To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Varient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Applicants respectfully

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assert that '225 does not disclose a product stream comprising at least 95% alkyl aryl ether by weight. '225 discloses, at best, a stream comprising only 30% by weight of alkyl aryl ether.

Applicants note that the Examiner, in responding arguments presented in the Applicants' prior response, stated "the disclosed amounts of the alkyl aryl ether are expressed differently through the specification, i.e. % by weight etc., and thus may be distinct from those claimed, it is incumbent upon applicants(s) to establish that they are in fact different and whether such difference is unobvious." (Office Action, page 2) Applicants believe that both the reference and the pending application are consistent in their description of stream constituents. Additionally, the Examiner has only issued an anticipation rejection and has not issued an obviousness rejection under 35 U.S.C. §103(a) and accordingly, Applicants respectfully assert that there is no requirement for Applicants to rebut an assertion of obviousness. Irregardless, Applicants feel compelled to point out that a *prima facie* case of obviousness also requires that all the elements of the claims be found in the prior art and the cited prior art does not contain all of the claimed elements.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance are requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 07-0893.

Respectfully submitted,

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